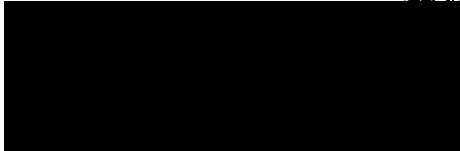


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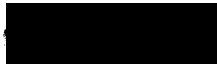
**U.S. Citizenship
and Immigration
Services**

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



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FILE:



Office: MIAMI (BDC)

Date: JUL 23 2004

IN RE:

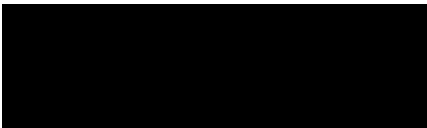
Obligor:
Bonded Alien



IMMIGRATION BOND:

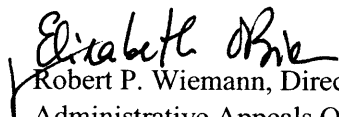
Bond Conditioned for the Delivery of an Alien under Section 103 of the
Immigration and Nationality Act, 8 U.S.C. § 1103

ON BEHALF OF OBLIGOR:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The delivery bond in this matter was declared breached by the District Director, Miami, Florida, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The record indicates that on November 5, 2002, the obligor posted a \$10,000 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated November 27, 2002, was sent to the co-obligor via certified mail, return receipt requested. The notice demanded the bonded alien's surrender into the custody of an officer of the Immigration and Naturalization Service (legacy INS), now Immigration and Customs Enforcement (ICE), at 10:00 a.m. on December 18, 2002 at [REDACTED]

[REDACTED] The obligor failed to present the alien, and the alien failed to appear as required. On January 7, 2003, the district director informed the co-obligor that the delivery bond had been breached.

On appeal, counsel asserts that because the Form I-166 was attached to the Form I-340 and had the same surrender date, the obligor has no way of knowing if ICE waited the required three days to mail the Form I-166 to the alien.

It is noted that the legacy INS had previously issued a Notice to Deliver the Alien that contained an incorrect surrender date. Counsel claims that the obligor is entitled to rescission of the breach regardless of when ICE mailed the second Form I-166. The issuance of the second Form I-340 with a surrender date of December 18, 2002 supersedes all prior demands including the mailing of the previous Form I-166.

On appeal, counsel argues that the sending of a Form I-166 has had such a prejudicial effect on the obligor's ability to produce the alien that the bond should be canceled.

Form I-166 has not been required since July 25, 1986, which is the effective date of an amendment to former 8 C.F.R. § 243.3. That amendment had no effect on the obligor's agreement to produce the alien upon request. Further, the obligor's contractual obligation to surrender the alien is not affected by ICE's discharge of its responsibility to locate and remove an alien by sending the Form I-166 to the alien's last known address. 79441341 10/20/03

The present record contains evidence that a properly completed questionnaire with the alien's photograph attached was forwarded to the obligor with the notice to surrender pursuant to the Amwest/Reno Settlement Agreement, entered into on June 22, 1995 by the legacy INS and Far West Surety Insurance Company.

Delivery bonds are violated if the obligor fails to cause the bonded alien to be produced or to produce himself/herself to an immigration officer or immigration judge, as specified in the appearance notice, upon each and every written request until removal proceedings are finally terminated, or until the said alien is actually accepted by ICE for detention or removal. *Matter of Smith*, 16 I&N Dec. 146 (Reg. Comm. 1977).

The regulations provide that an obligor shall be released from liability where there has been "substantial performance" of all conditions imposed by the terms of the bond. 8 C.F.R. § 103.6(c)(3). A bond is breached when there has been a substantial violation of the stipulated conditions of the bond. 8 C.F.R. § 103.6(e).

8 C.F.R. § 103.5a(a)(2) provides that personal service may be effected by any of the following:

- (i) Delivery of a copy personally;

- (ii) Delivery of a copy at a person's dwelling house or usual place of abode by leaving it with some person of suitable age and discretion;
- (iii) Delivery of a copy at the office of an attorney or other person including a corporation, by leaving it with a person in charge;
- (iv) Mailing a copy by certified or registered mail, return receipt requested, addressed to a person at his last known address.

The evidence of record indicates that the Notice to Deliver Alien dated November 27, 2002 was sent to the co-obligor via certified mail. This notice demanded that the obligor produce the bonded alien on December 18, 2002. The domestic return receipt indicates the co-obligor received notice to produce the bonded alien on December 16, 2002. Consequently, the record clearly establishes that the notice was properly served on the obligor in compliance with 8 C.F.R. § 103.5a(a)(2)(iv).

It is clear from the language used in the bond agreement that the obligor shall cause the alien to be produced or the alien shall produce himself to an ICE officer upon each and every request of such officer until removal proceedings are either finally terminated or the alien is accepted by ICE for detention or removal.

It must be noted that delivery bonds are exacted to insure that aliens will be produced when and where required by ICE for hearings or removal. Such bonds are necessary in order for ICE to function in an orderly manner. The courts have long considered the confusion which would result if aliens could be surrendered at any time or place it suited the alien's or the surety's convenience. *Matter of L-*, 3 I&N Dec. 862 (C.O. 1950).

After a careful review of the record, it is concluded that the conditions of the bond have been substantially violated, and the collateral has been forfeited. The decision of the field office director will not be disturbed.

ORDER: The appeal is dismissed.